

<input checked="" type="checkbox"/> FILED ENTERED	<input type="checkbox"/> RECEIVED SERVED ON COUNSEL/PARTIES OF RECORD
FEB - 3 2014	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY

CHARLES LA BELLA
KATHLEEN MCGOVERN
Deputy Chiefs
THOMAS B. W. HALL
Trial Attorney
Fraud Section, Criminal Division
U.S. Department of Justice
1400 New York Avenue, NW
Washington, DC 20530
(202) 616-1682

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

-oOo-

UNITED STATES OF AMERICA,

Plaintiff,

v.

BARRY LEVINSON,

Defendant.

CASE NO. 2:14-CR-10-~~000~~^{JCM}-VCF

PLEA MEMORANDUM

The United States of America, by and through Jeffery H. Knox, Chief, U.S. Department of Justice, Criminal Division, Fraud Section, and Kathleen McGovern, Senior Deputy Chief, Charles La Bella, Deputy Chief, and Thomas B.W. Hall, Trial Attorney, U.S. Department of Justice, Criminal Division, Fraud Section, the defendant, BARRY LEVINSON ("Defendant"), and the defendant's attorney, E. Brent Bryson, submit this plea memorandum.

The United States and the defendant have reached the following plea agreement, which is not binding on the court:

I. THE PLEA AGREEMENT

A. The Plea

1. Defendant will plead guilty to Count One of the information, charging Defendant with conspiracy to commit wire and mail fraud, in violation of Title 18, United States Code,

1 Section 1349; Count Two of the information, charging Defendant with tax evasion in violation of
 2 Title 26, United States Code, Section 7201; and Count Three of the information, charging
 3 Defendant with wire fraud in violation of Title 18, United States Code, Section 1343. Defendant
 4 also agrees to pay restitution and to the forfeiture of the property set forth in this Plea
 5 Memorandum.

6 **B. Additional Charges**

7 2. The United States Department of Justice, Criminal Division, Fraud Section agrees
 8 to bring no additional criminal charges in the District of Nevada against the defendant relating to
 9 or arising from the offenses charged in the information, except for any crime of violence and any
 10 crime unknown to the Fraud Section before the time the parties sign this Plea Memorandum. In
 11 addition, after Defendant enters his plea of guilty to the Information in this case, the United
 12 States will move to dismiss the outstanding charges against Defendant in the case captioned
 13 *United States v. Benzer*, Case No. 2:13-cr-00018-JCM-GWF.

14 **C. Sentencing Guideline Calculations**

15 3. Defendant understands that the Court is required to consider the United States
 16 Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") among other factors in
 17 determining the defendant's sentence. Defendant understands that the Sentencing Guidelines are
 18 advisory, and that after considering the Sentencing Guidelines, the Court may be free to exercise
 19 its discretion to impose any reasonable sentence up to the maximum set by statute for the crime
 20 of conviction.

21 4. Sentencing Guidelines:

22 a. The parties agree that the following calculations of the United States Sentencing
 23 Guidelines (2013) apply to the conspiracy to commit wire fraud and mail fraud conduct (Count
 24 One):

25 Base Offense Level
 26 (U.S.S.G. §2B1.1(a)):

7

1 Loss Amount of \$7,000,000 to \$20,000,000
 (U.S.S.G. §2B1.1(b)(1)(D)): 20

2 Sophisticated Means
 (U.S.S.G. §2B1.1(b)(9)(c)): 2

3 Abuse of Position of Trust
 (U.S.S.G. §3B1.3): 2

4 TOTAL 31

5 b. The parties agree that the following calculations of the United States Sentencing
 6 Guidelines (2013) apply to tax evasion conduct (Count 2):

7 Base Offense Level
 (U.S.S.G. §§2T1.1(a)(1) and 2T4.1(D)) 12

8 TOTAL 12

9 c. The parties agree that the following calculations of the United States Sentencing
 10 Guidelines (2013) apply to the wire fraud conduct (Count 3):

11 Base Offense Level
 (U.S.S.G. §2B1.1(a)): 7

12 Loss Amount of \$200,000-\$400,000
 (U.S.S.G. §2B1.1(b)(1)(D)): 12

13 Abuse of Position of Trust
 (U.S.S.G. §3B1.3): 2

14 TOTAL 23

15 d. The parties agree that pursuant to U.S.S.G. § 3D1.4, the appropriate total offense
 16 level is 31.

17 5. Acceptance of Responsibility: Pursuant to U.S.S.G. §3E1.1(a), the United States
 18 will recommend that the defendant receive a 2-level adjustment for acceptance of responsibility
 19 unless Defendant (a) fails to make a complete factual basis for the guilty plea at the time it is
 20 entered; (b) is untruthful with the Court or probation officers in any respect, including without
 21 limitation, financial information; (c) denies involvement in the offense or provides conflicting
 22 statements regarding defendant's involvement; (d) attempts to withdraw the guilty plea; (e)

1 engages in criminal conduct; (f) fails to appear in court; or (g) violates the conditions of
2 defendant's pretrial release conditions.

3 6. Pursuant to U.S.S.G. §3E1.1(b), the United States will, in its sole discretion, make
4 a motion for an additional 1-level adjustment for acceptance of responsibility prior to sentencing
5 if the defendant timely notifies the United States of the defendant's intention to plead guilty,
6 thereby permitting the United States to avoid preparing for trial and allowing for the efficient
7 allocation of resources.

8 7. Defendant's Criminal History Category will be determined by the court.

9 **D. Other Sentencing Matters**

10 8. The parties agree that the Sentencing Guideline calculations are based on
11 information now known and could change upon investigation by the United States Probation
12 Office. It is possible that factors unknown or unforeseen by the parties to the Plea Memorandum
13 may be considered in determining the offense level, specific offense characteristics, and other
14 related factors. In that event, the defendant will not withdraw his plea of guilty. Both Defendant
15 and the United States are free to: (a) supplement the facts by supplying relevant information to
16 the United States Probation Office and the Court, and (b) correct any and all factual inaccuracies
17 relating to the calculation of the sentence.

18 9. The stipulations in this Plea Memorandum do not bind either the United States
19 Probation Office or the Court. Both Defendant and the United States are free to: (a) supplement
20 the facts by supplying relevant information to the United States Probation Office and the Court,
21 and (b) correct any and all factual inaccuracies relating to the calculation of the sentence.

22 **E. Fines and Special Assessment**

23 10. Defendant agrees that the Court may impose a fine due and payable immediately
24 upon sentencing.

25 11. Defendant will pay the special assessment of \$100 per count of conviction at the
26 time of sentencing.

1 **F. Restitution**

2 12. Defendant agrees to make full restitution to the victims of the offense, in this case
3 the Internal Revenue Service and the legal clients described below in Section IV(C). Defendant
4 understands and agrees that this amount could be as much as \$271,646 (\$28,211 (IRS) +
5 \$243,435 (legal clients)). In return for Defendant agreeing to make restitution, the United States
6 agrees not to bring any additional charges against Defendant for the conduct giving rise to the
7 relevant conduct. Defendant understands that any restitution imposed by the Court may not be
8 discharged in whole or in part in any present or future bankruptcy proceeding.

9 **G. Forfeiture**

10 13. The parties agree that the government will not request that the Court require
11 Defendant to pay forfeiture in addition to restitution. However, should the Court nevertheless
12 order that Defendant shall pay forfeiture, the government agrees that such amount shall be the
13 \$271,646. In the event of any order by the Court that Defendant shall pay forfeiture, Defendant
14 knowingly and voluntarily agrees to the following:

- 15 a. to abandon or to forfeit the property to the United States;
- 16 b. to relinquish all right, title, and interest in the property;
- 17 c. to waive his right to any abandonment proceedings, any civil administrative
18 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture
19 proceedings ("proceedings") of the property;
- 20 d. to waive service of process of any and all documents filed in this action or any
21 proceedings concerning the property arising from the facts and circumstances of this case;
- 22 e. to waive any further notice to Defendant, Defendant's agents, or Defendant's
23 attorney regarding the abandonment or the forfeiture and disposition of the property;
- 24 f. not to file any claim, answer, petition, or other documents in any proceedings
25 concerning the property;
- 26 g. to waive the statute of limitations, the CAFRA requirements, Fed. R. Crim. P.

1 7(c)(2), 32.2(a), and 32.2(b)(3), and the constitutional due process requirements of any
 2 abandonment proceeding or any forfeiture proceeding concerning the property;

3 h. to waive Defendant's right to a jury trial on the forfeiture of the property;

4 i. to waive (a) all constitutional, legal, and equitable defenses to, (b) any
 5 constitutional or statutory double jeopardy defense or claim concerning, and (c) any claim or
 6 defense under the Eighth Amendment to the United States Constitution, including, but not
 7 limited to, any claim or defense of excessive fine in any proceedings concerning the property;
 8 and

9 j. to the entry of an Order of Forfeiture of the property to the United States.

10 14. Defendant knowingly and voluntarily agrees and understands the abandonment,
 11 the civil administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the
 12 property shall not be treated as satisfaction of any assessment, fine, restitution, cost of
 13 imprisonment, or any other penalty this Court may impose upon Defendant in addition to the
 14 abandonment or the forfeiture.

15 **F. Waiver of Appeal**

16 15. In exchange for the concessions made by the United States in this Plea
 17 Memorandum, Defendant knowingly and expressly waives the right to appeal any sentence that
 18 is imposed within the applicable Sentencing Guideline range as calculated by the Court, further
 19 waives the right to appeal the manner in which that sentence was determined on the grounds set
 20 forth in Title 18, United States Code, Section 3742, and further waives the right to appeal any
 21 other aspect of the conviction or sentence, including any order of restitution and forfeiture.
 22 Defendant reserves only the right to appeal any portion of the sentence that is an upward
 23 departure from the applicable Sentencing Guideline range calculated by the Court.

24 16. Defendant also waives all collateral challenges, including any claims under 28
 25 U.S.C. § 2255, to Defendant's conviction, sentence and the procedure by which the Court
 26 adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of
 counsel.

1 **G. Additional Promises, Agreements, and Conditions**

2 17. In exchange for the United States entering into this Plea Memorandum, Defendant
3 agrees that (a) the facts set forth in Section IV of this Plea Memorandum shall be admissible
4 against Defendant under Fed. R. Evid. 801(d)(2)(A) in the following circumstances: (i) for any
5 purpose at sentencing; and (ii) in any subsequent proceeding, including a trial in the event
6 Defendant does not plead guilty or withdraws Defendant's guilty plea, to impeach or rebut any
7 evidence, argument or representation offered by or on Defendant's behalf; and (b) Defendant
8 expressly waives any and all rights under Fed. R. Criminal P. 11(f) and Fed. R. Evid. 410 with
9 regard to the facts set forth in Section IV of the Plea Memorandum to the extent set forth above.

10 18. The parties agree that no promises, agreements, and conditions have been entered
11 into other than those set forth in this plea memorandum, and will not be entered into unless in
12 writing and signed by all parties.

13 **H. Limitations**

14 19. This Plea Memorandum is limited to the Criminal Division of the United States
15 Department of Justice and cannot bind any other federal, state or local prosecuting,
16 administrative, or regulatory authority. But, this Plea Memorandum does not prohibit the United
17 States through any agency thereof, the Criminal Division of the United States Department of
18 Justice, or any third party from initiating or prosecuting any civil proceeding directly or
19 indirectly involving Defendant, including but not limited to, proceedings under the False Claims
20 Act relating to potential civil monetary liability or by the Internal Revenue Service relating to
21 potential tax liability.

22 **I. Cooperation**

23 20. Defendant agrees, if requested by the United States, to provide complete and
24 truthful information and testimony concerning Defendant's knowledge of all other persons who
25 are committing or have committed offenses against the United States or any state, and agrees to
26 cooperate fully with the United States in the investigation and prosecution of such persons.
Defendant also agrees to cooperate fully with the State Bar of Nevada ("Nevada Bar") in

1 connection with its investigation of certain matters relating to funds taken from client trust
 2 accounts and client funds and to surrender his license to practice law and to agree to be disbarred
 3 from the Nevada Bar. Defendant specifically gives his consent to disbarment related to the Nev.
 4 Sup. Ct. R. 102 petition under which Defendant is currently suspended from practicing law
 5 (Nevada Supreme Court Case No. 60530, *In the Matter of Discipline of Barry Levinson, Esq.,*
 6 *Bar No. 6721.*).

7 21. In the event the government decides in its sole discretion that the assistance
 8 provided by Defendant amounts to "substantial assistance" pursuant to U.S.S.G. § 5K1.1, the
 9 United States will timely file a motion for downward departure from the applicable Sentencing
 10 Guideline calculation. The Court has the sole discretion to grant such a motion.

11 22. Defendant agrees that a motion for downward departure based on substantial
 12 assistance shall not be made under any circumstances unless Defendant's cooperation is deemed
 13 to be substantial assistance by the government. The United States has made no promise, implied
 14 or otherwise, that Defendant will be granted a departure for substantial assistance. Further, no
 15 promise has been made that such a motion will be made even if Defendant complies with the
 16 terms of this Plea Memorandum in all respects but has been unable to provide substantial
 17 assistance as determined in the sole discretion of the government.

18 23. The United States agrees to consider the totality of the circumstances, including
 19 but not limited to, the following factors, in determining whether, in the sole discretion of the
 20 government, Defendant has provided substantial assistance which would merit a motion by the
 21 United States for a downward departure from the applicable Guideline:

- 22 a. The United States' evaluation of the significance and usefulness of
 23 Defendant's assistance;
- 24 b. The truthfulness, completeness, and reliability of any information or
 25 testimony provided by Defendant;
- 26 c. The nature and extent of Defendant's assistance;

1 d. The truthfulness and completeness in disclosing and bringing to the
2 attention of the Government all crimes which Defendant has committed and all administrative,
3 civil, or criminal proceedings, investigations, and prosecutions in which he has been or is a
4 subject, target, party, or witness;

5 e. The truthfulness and completeness in disclosing and providing to the
6 Government, upon request, any document, record, or other evidence relating to matters about
7 which the Government or any designated law enforcement agency inquires, including but not
8 limited to, Defendant's personal finances;

9 f. Any injury suffered, or any danger or risk of injury to Defendant or
10 Defendant's family resulting from defendant's assistance; and,

11 g. The timeliness of Defendant's assistance.

12 24. Defendant agrees that in the event the United States files a downward departure
13 motion based upon Defendant's substantial assistance, the United States reserves the right to
14 make a specific recommendation to the Court regarding the extent of such a departure.
15 Defendant understands that under no circumstances will the United States make a specific
16 recommendation for a custodial sentence of less than 2 years (24 months), and Defendant further
17 understands and agrees that under no circumstances may Defendant or his counsel argue for a
18 sentence of less than 2 years (24 months) based upon cooperation. Defendant understands and
19 agrees that the final decision as to how much of a departure, if any, is warranted rests solely with
20 the Court.

21 **J. Breach**

22 25. Defendant agrees that if Defendant, at any time after the signature of this Plea
23 Memorandum and execution of all required certifications by Defendant, Defendant's counsel,
24 and for the government, knowingly violates or fails to perform any of Defendant's obligations
25 under this Memorandum ("a breach"), the government may declare this Memorandum breached.
26 All of Defendant's obligations are material, a single breach of this Plea Memorandum is
sufficient for the government to declare a breach, and Defendant shall not be deemed to have

1 cured a breach without the express agreement of the government in writing. If the government
2 declares this Memorandum breached, and the Court finds such a breach to have occurred, then:
3 (a) if Defendant has previously entered a guilty plea pursuant to this Memorandum, Defendant
4 will not be able to withdraw the guilty plea, and (b) the government will be relieved of all its
5 obligations under this agreement.

6 **K. Tax-Specific Provisions**

7 26. Defendant agrees that he will sign any IRS forms deemed necessary by the IRS to
8 enable it to make an immediate assessment of that portion of the tax Defendant is ordered to pay
9 as restitution.

10 27. Defendant also agrees to sign IRS Form 8821, "Tax Information Authorization."

11 28. Defendant agrees not to file any claim for refund of taxes or interest represented
12 by any amount of restitution paid pursuant to this Plea Agreement. The parties understand,
13 however, that Defendant will receive proper credit for any payments made pursuant to this Plea
14 Agreement.

15 29. Defendant understands that he must make restitution payments to the Office of the
16 Clerk of Court, and that those payments will be forwarded to IRS-RACS, Attn: Mail Stop 6261,
17 Restitution, 333 W. Pershing Ave., Kansas City, MO 64108.

18 30. Defendant understands that, pursuant to 26 U.S.C. 6201(a)(4), the IRS may use
19 the restitution order in this case as the basis for a civil tax assessment. Defendant does not have
20 the right to challenge the amount of this assessment. *See* 26 U.S.C. 6201(a)(4)(C). Neither the
21 existence of a payment schedule in this case nor Defendant's timely payments according to that
22 schedule will preclude the IRS from administrative collection of the restitution based assessment,
23 including levy and distraint under 26 U.S.C. 6331.

24 31. Defendant understands that nothing in this Plea Agreement shall limit the Internal
25 Revenue Service in its lawful examination, determination, assessment, or collection of any taxes,
26 penalties or interest due from Defendant for the time period(s) covered by this Plea Agreement
or any other time period. Defendant agrees that this Plea Agreement, or any judgment, order,

1 release, or satisfaction issued in connection with this Plea Agreement, will not satisfy, settle, or
2 compromise Defendant's obligation to pay the balance of any remaining civil liabilities,
3 including tax, additional tax, additions to tax, interest, and penalties, owed to the Internal
4 Revenue Service for the time period(s) covered by this Plea Agreement or any other time period.

5 32. Defendant agrees to cooperate fully with the IRS in its civil examination,
6 determination, assessment, and collection of income taxes related to his income tax returns, and
7 he further agrees not to conceal, or transfer for no consideration any funds or property that could
8 be used to satisfy any outstanding taxes, penalties, and interest. To that end, Defendant will:

9 a. Promptly file any and all outstanding and/or delinquent tax returns that remain
10 unfiled and to pay any taxes, interest, and penalties due and owing as a result of said returns;

11 b. Cooperate with the Internal Revenue Service by providing all financial
12 information necessary to ascertain and assess Defendant's back taxes, interest, and penalties;

13 c. Provide to the Internal Revenue Service all financial information necessary to
14 determine Defendant's ability to pay;

15 d. Make a good faith effort to pay all delinquent and/or additional taxes, interest and
16 penalties, including paying the liability stemming from the offense conduct described herein in a
17 lump sum should the Internal Revenue Service determine he is able to so pay, or entering an
18 installment agreement to pay the liability in total during the period of supervised release or
19 probation; and

20 e. Timely file his federal income tax returns during the term of supervised release
21 and refrain from incurring new credit charges or opening additional lines of credit without the
22 approval of his probation officer unless he is in compliance with any installment payment
23 schedule.

24 II. PENALTY

25 33. The maximum penalty for a violation of Title 18, United States Code, Section
26 1349, is imprisonment for not more than thirty (30) years, a \$1,000,000 fine, or both. Defendant
is also subject to supervised release for a term of not greater than five (5) years.

36. Supervised release is a period of time following imprisonment during which Defendant will be subject to various restrictions and requirements. Defendant understands that if Defendant violates one or more of the conditions of any supervised release imposed, Defendant may be returned to prison for all or part of the term of supervised release, which could result in Defendant serving a total term of imprisonment greater than the statutory maximum stated above.

37. Defendant is required to pay for the costs of imprisonment, probation, and supervised release, unless Defendant establishes that Defendant does not have the ability to pay such costs, in which case the court may impose an alternative sanction such as community service.

38. The essential elements for the offense of conspiracy to commit wire and mail fraud, in violation of 18 U.S.C. § 1349, are as follows:

a. First, from as early as in or about August 2003 through at least in or about February 2009, there was an agreement between two or more persons to commit mail fraud and wire fraud;

b. Second, the defendant was a party to or a member of that agreement; and,

c. Third, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it.

39. The essential elements for the offense of tax evasion, in violation of 26 U.S.C. § 7201, are as follows:

- a. First, an affirmative act by defendant to evade or defeat a tax;
- b. Second, an additional tax due and owing; and,
- c. Third, willfulness as defined as an intentional violation of a known legal duty, i.e., to report all of one's income on their tax return and to pay all required taxes.

40. The essential elements for the offense of wire fraud, in violation of 18 U.S.C. § 1343, are as follows:

- a. First, the existence of a scheme to defraud;
- b. Second, the use of wire, radio, or television to further the scheme; and,
- c. Third, a specific intent to defraud.

IV. FACTS

41. Defendant is pleading guilty because Defendant is guilty of the charged offenses.

A. The HOA Conspiracy

42. Defendant specifically admits and declares under penalty of perjury that all of the facts set forth below in Paragraphs 43-58 of which Defendant has knowledge of as a member of the conspiracy are true and correct. The parties agree that some of the facts outlined below in Paragraphs 43-58 were actions taken by Defendant's co-conspirators and without the knowledge or involvement of Defendant at the time; however, Defendant acknowledges that he knew of the unlawful purpose of the conspiracy and willfully joined it and that he is, therefore, responsible as a member of the conspiracy for those actions that were taken by his co-conspirators in furtherance of the conspiracy. Defendant's actions in furtherance of the conspiracy are specifically indicated.

43. From as early as in or around August 2003, Defendant knowingly participated in a scheme to control various Homeowners' Association (HOA) Boards of Directors so that the HOA boards would award the handling of construction defect lawsuits and remedial construction contracts to a law firm and construction company designated by Defendant's co-conspirators.

1 44. The conspirators would identify HOA's which potentially could bring
2 construction defect cases, and once identified would enlist real estate agents to identify
3 condominium units within those HOA communities for purchase.

4 45. Co-conspirators would then enlist individuals as straw purchasers to apply for and
5 complete mortgage loans using their own name and credit for the purchase of properties within
6 the HOA communities on behalf of the beneficial owners. The co-conspirators arranged for the
7 straw purchasers to get the necessary funding for the mortgages by assisting them with the loan
8 applications and closing documents, which included false and fraudulent statements that
9 involved concealing the identity and financial interest of the true beneficial owners of the
10 properties from banks, mortgage companies, HOAs, and bona fide homeowners. The co-
11 conspirator real estate agents arranged for the down payments to be funded by a co-conspirator
12 and arranged for the money to be transferred to the escrow accounts.

13 46. Once the straw purchases were complete, the beneficial owners and co-
14 conspirators often found tenants to rent the units. The beneficial owners received the rental
15 payments and continued to pay the mortgages and various expenses associated with the straw
16 purchase.

17 47. Co-conspirators were hired to manage and operate the payments associated with
18 maintaining these straw properties. The co-conspirators called this business of funding these
19 properties the "Bill Pay Program." The co-conspirators involved in running the Bill Pay Program
20 maintained several limited liability companies, at the direction of the co-conspirator construction
21 company owner and others, for the purpose of opening bank accounts and concealing the Bill
22 Pay Program funds. Many of the payments on these properties were wired or caused to be wired
23 from California to Nevada.

24 48. On several occasions, instead of making a straw purchase, the co-conspirators
25 transferred a partial interest in a unit to another co-conspirator for the purpose of making it
26 appear as if the co-conspirator was a bona fide homeowner. The co-conspirator real estate agent

1 would assist with the paperwork involved in such transfers and arranged for the completion of
2 the paperwork.

3 49. Many of the straw purchasers and those who acquired a transferred interest in the
4 properties agreed with co-conspirators to run for election to the respective HOA Board of
5 Directors. These co-conspirators were paid or promised cash, checks, or things of value for their
6 participation, all of which resulted in a personal financial benefit to the co-conspirators.

7 50. To ensure the co-conspirators would win the elections, co-conspirators at times
8 employed deceitful tactics, such as creating false phone surveys to gather information about
9 homeowners' voting intentions, using mailing lists to vote on behalf of out-of-town homeowners
10 unlikely to participate in the elections, and submitting fake and forged ballots. Co-conspirators
11 also hired private investigators to uncover negative information on the bona fide candidates in
12 order to create smear campaigns.

13 51. Another tactic the co-conspirators used to rig certain HOA board elections was to
14 prepare forged ballots for out-of-town homeowners and either cause them to be transported or
15 mailed to California and thereafter to have the ballots mailed back to Las Vegas from various
16 locations around California so as to make it appear that the ballots were completed and mailed by
17 bona fide homeowners residing outside Nevada. For instance, on or about April 15, 2008 and on
18 or about April 21, 2008, a co-conspirator mailed ballots from several mail boxes in California
19 back to Nevada in order to assist in the rigging of an election at Park Avenue.

20 52. On several occasions, co-conspirators attempted to create the appearance that the
21 elections were legitimate by hiring "independent" attorneys to run the HOA board elections.
22 These "special election masters" were to: (i) contact the bona fide homeowners to inform them
23 of the election; (ii) mail the bona fide homeowners election ballots and voting instructions; (iii)
24 collect and secure those election ballots returned by mail until the date of the election; and (iv)
25 preside over the HOA board election, including supervising the counting of ballots. However, in
26 truth and fact, the "special election masters" were selected by the co-conspirators and paid in
cash, check, or promised things of value, by or on behalf of the co-conspirator construction

1 company and its owner, for their assistance in rigging the elections. In particular, the "special
2 election masters" allowed the co-conspirators to access the ballots for the purpose of opening the
3 ballots and pre-counting the votes entered for each candidate to then know the number of fake
4 ballots which needed to be created to ensure the co-conspirator up for election won the seat on
5 the HOA board. These attorneys would run the board election knowing the co-conspirators had
6 access to the ballots and concealed their relationship with the co-conspirators from the bona fide
7 homeowners.

8 53. Specifically, Defendant was hired to represent the Park Avenue HOA. However,
9 Defendant treated a co-conspirator as his client rather than the HOA. In April 2008, several of
10 Defendant's co-conspirator rigged an HOA Board election at the Park Avenue HOA. The
11 legitimate homeowners filed a lawsuit and a special election master was hired for the make-up
12 election. Defendant attempted to bribe this special election master on behalf of his co-
13 conspirators.

14 54. Similarly, after a rigged election at the Pebble Creek HOA, the legitimate
15 homeowners filed a recall petition. Defendant was hired as the HOA general counsel at the
16 direction of a co-conspirator. Defendant then took several actions to attempt to deter the recall
17 election, including firing the property management company and filing a lawsuit to stop the
18 recall election. These attempts were unsuccessful, and after the recall election resulted in the
19 recall of all three co-conspirator HOA Board members, Defendant resigned his position at the
20 Pebble Creek HOA.

21 55. Once elected, the straw purchaser board members and those who acquired a
22 transferred interest would meet with the co-conspirators in order to manipulate board votes,
23 including the selection of property managers, contractors, general counsel and attorneys to
24 represent the HOA.

25 56. At times the co-conspirators created and submitted fake bids for "competitors" to
26 make the process appear to be legitimate while ensuring co-conspirators were awarded the
contract. Once hired, co-conspirators, including property managers and general counsel, would

1 then recommend that the HOA board hire the co-conspirator construction company for
 2 remediation and construction defect repairs and the co-conspirator law firm to handle the
 3 construction defect litigation. In addition, the co-conspirator construction company's initial
 4 contract for emergency remediation repairs contained a "right of first refusal" clause to ensure
 5 the co-conspirator construction company was awarded the construction repair contracts
 6 following the construction defect litigation.

7 57. This entire process created the appearance of legitimacy since bona fide
 8 homeowners believed the elected board members and other third party contractors were, as
 9 fiduciaries, acting in their best interest rather than to advance the financial interests of co-
 10 conspirators. In fact, participants in the scheme – including the Defendant – were paid or
 11 received things of value by or on behalf of their co-conspirators for their assistance in purchasing
 12 the properties, obtaining HOA membership status, rigging elections, using their positions to
 13 manipulate the HOA's business and to further the goals of the conspiracy, and to enrich the co-
 14 conspirators at the expense of the HOA and the bona fide homeowners.

15 **B. The Tax Evasion Conduct**

16 58. Defendant failed to file business and personal tax returns for the tax years 2005
 17 through 2010, as required by law, and filed a false 2011 tax return on April 15, 2012.

18 59. During the 2009 and 2010 calendar years, Defendant owned and operated his law
 19 practice, The Law Offices of Barry Levinson.

20 60. During the 2010 and 2011 calendar years, Defendant owned and operated his law
 21 practice, Barry Levinson and Associates.

22 61. During the entire operation of his law practice, Defendant accepted cash as a form
 23 of payment.

24 62. Sometime prior to 2009, Defendant began stealing client funds from his law
 25 practice.

26 63. During the 2009, 2010, and 2011 calendar years, in the District of Nevada,
 Defendant earned taxable income in the sum of \$151,810.16, \$132,327.06, and \$103,080.29,

1 respectively. Upon that taxable income, there was owing to the United State of America a
2 substantial sum of income tax.

3 64. Defendant failed to make any regular payments on the liability, as required by
4 law, or at any other time. Instead, Defendant did willfully attempt to evade and defeat the income
5 tax due and owing by him to the United States of America for the calendar years 2009, 2010 and
6 2011 by willfully committing affirmative acts of evasion, including but not limited to each of the
7 following:

8 a. Defendant deposited business receipts from his law practice into his personal
9 bank accounts. Defendant then caused personal expenses to be paid with these receipts.

10 b. Defendant did not inform his accountant that he diverted business receipts to his
11 personal bank accounts.

12 c. Defendant caused personal expenditures to be paid from his business bank
13 account, and did not account for these as part of his income.

14 d. Defendant was informed by a prior accountant that cash receipts should be
15 deposited into his business bank accounts. Nevertheless, Defendant failed to deposit these funds
16 into his business bank account, and failed to inform his new accountant of this additional
17 business income.

18 e. In 2010, Defendant lied to the Internal Revenue Service when informing the
19 agency that the business he operated was closed and all his employees had been dismissed.

20 f. Defendant caused a false 2011 Federal income tax return to be filed by failing to
21 report all income earned in the 2011 tax year.

22 **C. The Client Embezzlement Conduct**

23 **1. The Minor Client Conduct**

24 65. Between at least in or about March 2010 and in or about September 2011,
25 Defendant misappropriated funds due to several minor clients as part of personal injury claim
26 settlements. To carry out this scheme, Defendant would represent a minor client as part of a
personal injury case. The case would reach the settlement phase and Defendant would file on

1 cause to be filed a "Petition for Compromise of a Minor's Claim" ("Petition") with the Nevada
 2 state District Court. The Court would then order the disbursement of the settlement funds (less
 3 attorney's fees and medical bills) from an insurance company to a "blocked" (or interest-bearing
 4 trust account) account established for the benefit of the minor. Defendant was obligated to set up
 5 blocked accounts for these minors and failed to do so. Defendant instead deposited or caused to
 6 be deposited settlement funds into his personal and/or business accounts, where Defendant used
 7 them for personal purposes.

8 66. The following table summarizes nine occasions on which Defendant engaged in
 9 this conduct:

11 Minor Initials	12 Date of Petition	13 Total Settlement Amount	14 Date(s) of Deposit to Defendant's Accounts
15 T.T.	16 3/9/10	17 \$115,000	18 3/18/10, 3/24/10
19 S.L.	20 4/15/10	21 \$5,000	22 10/25/10
23 J.B.	24 4/15/10	25 \$1,400	26 10/25/10
R.H.	10/8/10	\$10,235	10/15/11
D.A.H.	10/8/10	\$10,800	10/25/11
M.M.	8/27/10	\$4,000	10/23/12
M.M.	8/27/10	\$2,500	10/23/12
J.S.	5/24/11	\$13,500	7/1/11
E.T.	9/9/11	\$16,000	10/14/11
TOTAL		\$178,435	

23 2. The W.W. Conduct

24 67. W.W. was the president of a company ("W.D."). W.D. was seeking a loan and
 25 engaged with a broker to obtain that loan. In connection with engaging the broker, W.D. was
 26 required to pay a broker's fee of \$65,000 into escrow with a third party escrow agent. Defendant

1 was named to serve as the escrow agent for this transaction. On or about July 13, 2012, W.D.
 2 transferred \$65,000 via interstate wire transfer to a U.S. Bank account in Defendant's name. On
 3 or about July 17, 2012, a cashier's check was drawn on that same U.S. Bank account for
 4 \$60,000. Defendant never returned these funds to W.D. or W.W.

5 V. ACKNOWLEDGMENT

6 68. Defendant acknowledges by Defendant's signature below that Defendant has read
 7 this Plea Memorandum, that Defendant understands the terms and conditions and the factual
 8 basis set forth herein, that Defendant has discussed these matters with Defendant's attorney, and
 9 that the matters set forth in this memorandum, including the facts set forth in Part IV above, are
 10 true and correct.

11 69. Defendant acknowledges that Defendant has been advised, and understands, that
 12 by entering a plea of guilty Defendant is waiving, that is, giving up, certain rights guaranteed to
 13 Defendant by law and by the Constitution of the United States. Specifically, Defendant is giving
 14 up:

15 a. The right to proceed to trial by jury on the original charges, or to a trial by a judge
 16 if Defendant and the United States both agree;

17 b. The right to confront the witnesses against Defendant at such a trial, and to cross-
 18 examine them;

19 c. The right to remain silent at such trial, with such silence not to be used against
 20 Defendant in any way;

21 d. The right, should Defendant so choose, to testify in Defendant's own behalf at
 22 such a trial;

23 e. The right to compel witnesses to appear at such a trial, and to testify in
 24 Defendant's behalf; and,


25 f. The right to have the assistance of an attorney at all stages of such proceedings.
 26

1 70. Defendant acknowledges that Defendant is, in all respects, satisfied by the
2 representation provided by Defendant's attorney and that Defendant's attorney has discussed
3 with Defendant the burdens and benefits of this agreement and the rights he waives herein.


4 71. Defendant, Defendant's attorney, and the attorney for the United States
5 acknowledge that this Plea Memorandum contains the entire negotiated and agreed to by and
6 between the parties, and that no other promise has been made or implied by Defendant,
7 Defendant's attorney, or the attorney for the United States.

8
9
10 JEFFREY H. KNOX
11 Chief
12 United States Department of Justice,
13 Criminal Division, Fraud Section


14 1/10/14
15 DATED

16 
17 KATHLEEN McGOVERN
18 Senior Deputy Chief
19 CHARLES G. LA BELLA
20 Deputy Chief
21 THOMAS B.W. HALL
22 Trial Attorney
23 United States Department of Justice
24 Criminal Division, Fraud Section

25 Jan 7-14
26 DATED

27 
28 BARRY LEVINSON
29 Defendant

30 1/8/14
31 DATED

32 
33 E. BRENT BRYSON
34 Counsel for Defendant Levinson